IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 16436 of 2007(F)

PETITIONER:

SHRI. BIJU GOPALAN S/O GOPALAN,
MONIPPILLIKUNNEL HOUSE, VENMATTOM POST,
VANNAPPURAM VILLAGE, THODUPUZHA TALUK,
IDUKKI DISTRICT.

BY ADV. SRI.M.G.KARTHIKEYAN
SRI.P.V.SANTHOSH JOSE

RESPONDENTS:
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1. THE SUB INSPECTOR OF POLICE,
VAZHAKULAM POLICE STATION.

2. THE CIRCLE INSPECTOR OF POLICE,
MUVATTUPUZHA, ERNAKULAM DISTRICT.

3. THE DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA, ERNAKULAM DISTRICT.

4. JAMES S/O CHACKO,
KOCHUKUDIYIL HOUSE, (PEDIKKATTUKUNNEL),
VAZHAKKULAM POST, MANJALLOOR, MUVATTUPUZHA.

5. THE ASST. EXCISE COMMISSIONER,
ERNAKULAM DISTRICT.

6. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT.

BY ADV. SRI.JOMY GEORGE -- R4
GOVERNMENT PLEADER SRI. P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 16436/2007 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE TODDY SHOP LICENSE TO THE PETITIONER.

EXT.P2. COPY OF THE REQUEST FOR POLICE PROTECTION MADE BY THE PETITIONER BEFORE THE R1 TO R3.

RESPONDENT'S EXHIBITS

EXT.R4A. COPY OF THE MASS PETITION FILED BY THE LOCAL MEMBERS BEFORE THE EXCISE AUTHORITIES DTD. NIL.

EXT.R4B. COPY OF THE MASS PETITION FILED BY THE LOCAL RESIDENTS BEFORE THE DIST/ COLLECTOR ERNAKULAM DT. 21/3/2007.

EXT.R4C. COPY OF THE COMPLAINT FILED BY THE BLOCK PROGRAMME OFFICER OF BLOCK RESORUCE CENTRE BEFORE THE EXCISE CIRCLE INSPECTOR, MUVATTUPUZHA DT. 1/6/07.

EXT.R4D. COPY OF THE NEWS ITEM WHICH APPEARED IN MATHRUBHUMI DAILY NEWS PAPER ON 16/5/2007.

EXT.R4E. COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND THE REPRESENTATIVES OF THE LOCAL PUBLIC DT. 12/5/07.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.16436 of 2007-F

Judgment

Balakrishnan Nair, J.

The petitioner is the licensee of TS No.71/07-08 of Manjallur in Muvattupuzha Excise Range. After obtaining Ext.P1 licence, when he started the functioning of the shop, the people of the locality under the leadership of the 4th respondent, tried to obstruct its functioning. The 1st respondent SI of Police compelled him to sign an agreement, in which he agreed to shift the shop. According to him, after facing great difficulties, the present location, which is not a prohibited location, in terms of the Rules, has been identified. In fact, he never intended to shift the shop, but only because of the pressure exerted by the 1st respondent, he signed the agreement. In view of Ext.P1 licence, he is entitled to get protection to run the shop, it is submitted. So, he has filed a petition before the 1st respondent SI of Police and thereafter this Writ Petition is filed seeking appropriate reliefs.

2. The 4th respondent has filed a counter affidavit, resisting the prayers in the Writ Petition. According to the said respondent, the shop is established

in violation of the distance rule contained in Rule 7(2) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974. They have filed Exts.R1(a) and R1(b) petitions before the Excise Officials, pointing out the said illegality. The children and women in the area are staging peaceful protests before the shop. The said respondent has also produced the agreement signed by the petitioner, undertaking to remove the shop to another place as per Ext.R1(e). So the fourth respondent prays for dismissal of the Writ Petition. The learned Government Pleader upon instruction submitted that when there was obstruction, the Police went to the spot and ensured maintenance of peace. Thereafter, the petitioner voluntarily undertook to shift the shop, but in violation of that undertaking, he is still running the shop. It is also pointed out that the petition submitted by the party respondents has been considered by the Assistant Excise Commissioner and he has rejected the said petition, holding that the shop is not established in violation of the distance rule.

3. This Court has not so far ordered any protection for the shop. But, it is being run without any obstruction. The learned counsel for the respondents submitted that they are only conducting peaceful demonstrations, meetings etc and no physical obstruction is caused to the running of the shop. In view of the

above position and also taking into account the fact that the shop is being run without any protection, we feel that this Court need not issue any direction to the Police to grant protection to the shop. If the 4th respondent or the local people are aggrieved by the order of the Assistant Excise Commissioner, they may work out their remedy against the same. If there is any breach of peace in the locality, the Police, on being alerted, will look into the same.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

27.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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